

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

JOHN K STEPHENSON,

Plaintiff,

v.

CATERPILLAR INC. AND SEARS
MANUFACTURING CO.,

Defendants.

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Case No. 2:16-CV-00071-JRG-RSP

ORDER

The above entitled and numbered civil action was referred to United States Magistrate Judge Roy S. Payne pursuant to 28 U.S.C. § 636. Now before the Court is the Report & Recommendation (Dkt. No. 408) by Magistrate Judge Payne, which recommends that Third-Party Defendant Backer AB's (1) motion to dismiss (Dkt. No. 344) be denied in part as to Defendant Sears Manufacturing Co.'s contractual indemnity claim and granted in part as to Sears's common law indemnity claim, and (2) motion for summary judgment (Dkt. No. 359) be denied.


The Court has considered the objections filed by the parties and finds them to be without sufficient merit. (Dkt. No. 403). All of the arguments raised in the objections were properly considered by the Magistrate Judge, and this Court, on *de novo* review, finds no error in the findings and recommendations.

Having reviewed Magistrate Judge's report, Backer AB's motion to dismiss and reply in support thereof (Dkt. No. 351), Sears's response in opposition to Backer AB's motion to dismiss (Dkt. No. 349), Backer AB's motion for summary judgment and reply in support thereof (Dkt. No. 389), and Sears's response (Dkt. No. 371) and sur-reply (Dkt. No. 407) in opposition to

Backer AB's motion for summary judgment, the Court concludes Magistrate Judge Payne's Report & Recommendation (Dkt. No. 408) is correct and is hereby **ADOPTED**. Accordingly, Backer AB's motion to dismiss (Dkt. No. 344) is **DENIED IN PART** as to Sears's contractual indemnity claim and **GRANTED IN PART** as to Sears's common law indemnity claim, and Backer AB's motion for summary judgment (Dkt. No. 359) is **DENIED**.

So Ordered this

Mar 5, 2019



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE